



*AK [Signature]*  
PATENT APPLICATION

PATENT AND TRADEMARK OFFICE

BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of

Souji KIHIRA

On Appeal from Group: 2831

Application No.: 10/713,105

Examiner: W. MAYO, III

Filed: November 17, 2003

Docket No.: 117797

For: SHIELDED WIRE HARNESS

APPEAL BRIEF TRANSMITTAL

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Attached hereto is our Brief on Appeal in the above-identified application.

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For the convenience of the Finance Division, two additional copies of this transmittal letter are attached.

Respectfully submitted,

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BRIEF ON APPEAL

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Appeal from Group 2831

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**I. REAL PARTIES IN INTEREST**

The real parties in interest for this appeal and the present application are Autonetworks Technologies, Ltd., Sumitomo Wiring Systems, Ltd., and Sumitomo Electric Industries, Ltd., by way of an Assignment recorded in the U.S. Patent and Trademark Office at Reel 014705, Frame 0720.

**II. STATEMENT OF RELATED APPEALS AND INTERFERENCES**

There are no prior or pending appeals, interferences or judicial proceedings, known to Appellant, Appellant's representative, or the Assignees, that may be related to, or which will directly affect or be directly affected by or have a bearing upon the Board's decision in the pending appeal.

**III. STATUS OF CLAIMS**

Claims 1-6 are pending.

Claims 1-6 are rejected and are on appeal.

**IV. STATUS OF AMENDMENTS**

No Amendments have been filed subsequent to the close of prosecution by the December 3, 2004 Final Office Action.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

Claim 1 is directed to a shielded wire harness. The shielded wire harness comprises a plurality of wires, a plurality of wire-side terminals respectively connected to end portions of the wires and configured to be connected to respective terminals disposed within a shield case of an equipment, and a shielding member formed in a tube shape and configured to enclose the plurality of wires collectively and to be connected to the shield case. The shielding member comprises a main shield portion made of a substantially rigid metal pipe and a sub-shield portion formed shorter than the main shield portion and configured to be deformable.

As shown in Figs. 1 and 2, a shielded wire harness 1 includes a plurality of wires 30, a plurality of wire-side terminals 40 respectively connected to end portions of the wires 30 and configured to be connected to respective terminals 13 disposed within a shield case 11 of an equipment, e.g., an inverter unit 10. See page 4, line 16 - page 6, line 8. The shielded wire harness 1 also includes a shielding member 50 formed in a tube shape and configured to enclose the plurality of wires 30 collectively and to be connected to the shield case 11. See Figs. 1 and 2. The shielding member 50 comprises a main shield portion 51 made of a substantially rigid metal pipe, and a sub-shield portion 53 formed shorter than the main shield portion and configured to be deformable. See page 6, line 20 - page 7, line 3; page 12, line 19 - page 13, line 23, and page 17, line 20 - page 18, line 2.

#### **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The following grounds of rejection are presented for review:

- 1) Claims 1-6 are rejected as failing to comply with the written description requirement under 35 U.S.C. §112, first paragraph;
- 2) Claims 1-3, 5 and 6 are rejected as obvious under 35 U.S.C. §103(a) over Applicant's Own Admission of Prior Art ("AOAPA") in view of U.S. Patent No. 5,473,117 to Morgan et al. ("Morgan"); and
- 3) Claim 4 is rejected as obvious under 35 U.S.C. §103(a) over the AOAPA in view of Morgan, and further in view of U.S. Patent No. 3,280,246 to Lawson et al. ("Lawson").

#### **VII. ARGUMENT**

The Examiner rejects claims 1-6 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement, rejects pending claims 1-3, 5 and 6 under 35 U.S.C. §103(a) over the combination of AOAPA and Morgan, and rejects pending claim 4 under 35 U.S.C. §103(a) over the combination of AOAPA, Morgan and Lawson. However, the Examiner has consistently improperly applied the laws relating to the written description

requirement and to obviousness. Proper application of the law demonstrates that the specification provides ample description of the subject matter of the pending claims. Further, proper application of the law demonstrates that no prima facie case of obviousness has been established and that the subject matter of claims 1-6 would not have been obvious over the applied references.

**A. Claims 1-6 Comply With The Written Description Requirement**

Claims 1-6 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner alleges that the recitation of a "substantially rigid" metal pipe of claim 1 was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Thus, the Examiner asserts that the claims 1-6 contain new matter. However, Appellant respectfully submits that the recitation of a "substantially rigid" metal pipe is adequately supported by the original disclosure, and thus, does not constitute new matter.

Claim 1 recites a shielded wire harness including a shielding member having "a main shield portion made of a substantially rigid metal pipe." Claims 2-5 depend from claim 1, and thus also include such features. Appellant respectfully asserts that the modifier "substantially rigid" is inherent in the description provided by the specification as originally filed, and thus is not new matter. Further, Appellant respectfully asserts that determining the actual metes and bounds of an invention is not the standard for determining whether claims comply with the written description requirement under 35 U.S.C. §112, first paragraph.

**1. The Claimed "Substantially Rigid" Metal Pipe Is Supported By The Original Disclosure And Is Not New Matter**

The mere inclusion of dictionary or art recognized definitions known at the time of filing an application would not be considered new matter. If there are multiple definitions of

a term and a definition is added to the application, it must be clear from the application as filed that applicant intended a particular definition. See MPEP 2163.06, I.

The Examiner alleges that the disclosure of "two ends of the main shield portion 51 are fixed directly to two shield cases 11 and 21, stresses may be generated at the fixed portions due to vibrations thereof" does not define in a full, concise, and exact way that a main shield part is rigid. See, for example, pages 3-4 of the April 22, 2005 Advisory Action. Thus, the Examiner alleges that the recitation of a "substantially rigid" metal pipe is new matter because such feature is not supported by the original disclosure in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. See page 4 of the April 22, 2005 Advisory Action.

Appellant respectfully asserts that the modifier "substantially rigid" is inherent in the description provided by the specification, and thus is not new matter. The specification discloses, for example, that a main shield portion 51 may fulfill a shield function, and positively protect wires 30 from objects such as bouncing stones. See page 13, lines 2-10, and page 17, lines 9-14. The specification also discloses that the main shield portion 51 made of a metal pipe. See at least Fig. 1, page 13, lines 11-12, and page 17, line 20. If the two ends of the main shield portion 51 are fixed directly to two shield cases 11 and 21, stresses may be generated at the fixed portions due to vibrations thereof. See page 13, lines 12-15, and page 17, lines 20-23. The vibrations occur due to the substantially rigid nature of the metal pipe, e.g., main shield portion 51. Therefore, the specification teaches forming a flexible sub-shield portion 53 to absorb the vibrations of the main shield portion 51 and to reduce the stresses caused by a direct connection of the main shield portion 51 to the shield cases 11 and/or 21. See page 13, lines 15-19, and page 17, lines 23-25. Thus, based on the specification, one of ordinary skill in the art would understand that main shield portion 51 is substantially rigid.

If the main shield portion 51 was not made of a substantially rigid metal material, there would be no need to introduce a flexible sub-shield portion 53 between the main shield portion 51 and the shield cases 11 and 21 because the vibrations would be absorbed/reduced by the main shield portion 51 itself. In other words, if the main shield portion 51 is already flexible, providing a flexible sub-shield portion 53 would not serve the purpose specifically described in the specification. Therefore, the specification provides ample description of the subject matter recited in the claims such that one of ordinary skill in the art would be well aware that Applicant was in possession of "a main shield portion made of a substantially rigid metal pipe" at the time of filing.

The modifier "substantially rigid" is inherent in the description provided by the specification, and thus is not new matter. Thus, the rejection of claims 1-6 under 35 U.S.C. 112, first paragraph, is improper and should be reversed.

2. **The Written Description Requirement Of 35 U.S.C. §112, First Paragraph Is Not Directed To The Determination Of The Actual Metes And Bounds Of The Invention**

35 U.S.C. §112, second paragraph, indicates that a claim is indefinite when the claim includes a broad range/feature together with a narrow range/feature that falls within the broader range or feature. Therefore, the "claim does not clearly set forth the metes and bound of the patent protection desired." See MPEP §706.03(d). Thus, not setting forth the actual metes and bounds of an invention is a standard for determining that a claim is indefinite under 35 U.S.C. §112, second paragraph. Determining the actual metes and bounds of an invention is not the standard for determining whether claims comply with the written description requirement under 35 U.S.C. §112, first paragraph.

Therefore, in alleging that 35 U.S.C. §112, first paragraph, was written, so that the actual metes and bounds of the invention may be determined, the Examiner incorrectly states the law. See page 4 of the April 22, 2005 Advisory Action. While the examiner's statement

is relevant to indefiniteness under 35 U.S.C. §112, second paragraph, such considerations are irrelevant to the written description requirement under 35 U.S.C. §112, first paragraph. Thus, the Examiner fails to state a proper basis for rejecting claims 1-6 under 35 U.S.C. §112, first paragraph.

**B. Factual Inquiries to Determine Obviousness/Non-Obviousness**

Several basic factual inquiries must be made in order to determine obviousness or non-obviousness of claims of a patent application under 35 U.S.C. §103. These factual inquiries are set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966):

Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or non-obviousness of the subject matter is determined.

Graham goes on to state that:

Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc. might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.

383 U.S. at 17-18, 148 USPQ at 467.

The specific factual inquiries set forth in Graham have not been considered or properly applied by the Examiner in formulating the rejection of the claims. Particularly, the scope and content of the prior art and the level of ordinary skill in the pertinent art were not properly determined, demonstrated and applied to the claims.

In the present case, proper consideration of the factual inquiries demonstrates nonobviousness of the claims. Specifically, none of the applied references, either alone or in combination, teaches or suggests a shielding member having a main shield portion made of a substantially rigid metal pipe, as claimed.

**C. Claims 1-3, 5 and 6 Would Not Have Been Obvious Over AOAPA And Morgan**

Claims 1-3, 5 and 6 are rejected under 35 U.S.C. §103(a) over AOAPA in view of Morgan. However, any permissible combination of AOAPA and Morgan would not have rendered obvious the subject matter of claim 1.

The Examiner alleges that the AOAPA describes the shielded wire harness of claim 1 with the exception of a shielding member, formed in the tube shape configured to enclose a plurality of wires collectively, including a main shield portion made of a substantially rigid metal pipe, and including a sub-shield portion. The Examiner relies on inherency and the teachings of Morgan as allegedly suggesting to one of ordinary skill in the art to provide a shield case connected to a tube shaped shielding member including a substantially rigid metal pipe, and a sub-shield portion. However, the Examiner combines these references in a manner contrary to the teachings and knowledge of those skilled in the art, and without the requisite motivation for such combination.

Neither AOAPA nor Morgan, teaches or suggests, a shielding member having a main shield portion made of a substantially rigid metal pipe. Accordingly, neither the teachings of AOAPA nor Morgan, alone or in combination, would have led one of ordinary skill in the art to the subject matter of claim 1.

**1. AOAPA Does Not Teach Or Suggest All Of The Claimed Features**

The Examiner admits that the AOAPA does not teach or suggest a shielding member formed in the tube shape, configured to enclose a plurality of wires collectively, connected to a shield case, including a main shield portion made of a substantially rigid metal pipe, and including a sub-shield portion. However, the Examiner alleges that the AOAPA does inherently teach a substantially rigid metal pipe.

The AOAPA differs from the subject matter of claim 1 at least for the reasons admitted by the Examiner. Additionally, contrary to the features of claim 1, the AOAPA does not inherently teach a substantially rigid metal pipe as alleged by the Examiner.

2. **AOAPA Does Not Inherently Teach Or Suggest A "Substantially Rigid" Metal Pipe**

MPEP §2112 states the following:

The fact that a certain result characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flows from the teachings of the applied prior art.

The Examiner fails to provide a basis in fact and/or technical reasoning to support the allegation that "substantially rigid" is an inherent characteristic that necessarily flows from the teachings of AOAPA.

The AOAPA discloses a wire harness including a collective cylindrical-shaped flexible shielding member made of braided wires to cover a plurality of wires. See page 1, line 25 - page 2, line 5 of the specification. To protect the wires from bounced stones or the like, AOAPA teaches that the wires and the flexible shielding member are stored in a separate armored case made of high-strength metal material to protect both the shield member and the wires from bounced stones and the like. See page 2, lines 11-22 of the specification. Because the shielding member of the AOAPA is flexible, one of ordinary skill in the art

would not reasonably consider the AOAPA to teach or suggest that the flexible shielding member is substantially rigid.

Based on the specification, one of ordinary skill in the art would understand that the flexible shielding member of the AOAPA is not made out of the same high-strength metal material as the armored case. If the flexible shielding member was made of the same high-strength metal material as the armored case, the flexible shielding member would no longer be a flexible member. Thus, if the flexible shielding member were rigid, there would be no need to introduce the armored case because the flexible shielding member could protect itself. Therefore, making the shielding member substantially rigid would destroy the intended flexibility of the shielding member of the AOAPA and the armored case would not serve the purpose specifically described in the AOAPA.

The Examiner alleges that a metallic tube, i.e., the flexible shielding member, of the AOAPA "must be made of the same material as that of the claimed invention since it exhibits the same characteristic." See page 5 of the April 22, 2005 Advisory Action. However, contrary to the flexible shielding member of the AOAPA, the main shield portion recited in claim 1 is a substantially rigid metal portion that protects wires from objects such as bouncing stones. See page 13, lines 2-10, and page 17, lines 9-14. Therefore, the main shield portion of the present invention shares similar protective characteristics as the rigid armored case of the AOAPA.

As discussed above, because the AOAPA shielding member is flexible, the shielding member of the AOAPA does not share the same characteristics as the main shielded portion recited in claim 1. Therefore, the assertion that the flexible shielding member and the substantially rigid main shield portion recited in claim 1 must inherently be made of the same material because they share the same protective characteristics is unreasonable. Thus, the Examiner has failed to provide a basis in fact and/or technical reasoning to support the

allegation that the flexible shielding member of the AOAPA is "substantially rigid" is an inherent characteristic that necessarily flows from the teachings of the AOAPA.

**3. Morgan Does Not Remedy The Deficiencies Of AOAPA**

As discussed above, the Examiner relies on inherency and the teachings of Morgan as allegedly remedying the deficiencies of AOAPA. That is, the Examiner alleges that, inherently, the teachings of Morgan would have led one of ordinary skill in the art to provide a shield case connected to a tube shaped shielding member including a substantially rigid metal pipe, and a sub-shield portion set forth in the claims. Appellant respectfully disagrees.

**a. Morgan Does Not Teach A "Substantially Rigid" Metal Pipe**

Morgan teaches a flexible cable grounding scheme including a ground strap assembly 24, and a cable 10 having a plurality of conductors 18 collectively enclosed by an inner shield 16, an outer shield 14 and a hard plastic outer insulating sheath 12. See Figs. 1-3, and col. 2, lines 61-65. Morgan also teaches that the outer shield 14 and the inner shield 16 are made out of conductive foil shielding widely used in the electronics industry for cable shielding. See col. 2, line 67 - col. 3, line 8.

In forming the flexible cable grounding scheme, Morgan teaches that the outer and inner shields 14, 16 are folded around and conform to an external shape of a bundle of the conductors 18 to provide electromagnetic shielding for the conductors 18. See col. 2, line 67 - col. 3, line 8. Morgan teaches that that the insulating sheath 12 must first be removed without damaging the outer shield 14. See Fig. 1, and col. 3, lines 20-22. Because an outer surface of the conductive foil is not normally conductive, the outer shield 14 is then cut and folded back to expose a conductive inner surface providing an electrical contact with the ground strap assembly 24. See col. 3, lines 31-47, col. 6, lines 10-13, and Fig. 2.

Morgan also teaches that a large size of the cables 10 makes them rigid and inflexible, preventing the cable 10 from being bent in a curve with a tight radius. See col. 1, lines 12-16.

Morgan teaches that by bending the large cable 10 to form a curve with a tight radius, the shielding materials 14, 16 surrounding the conductors 18 often tear. See col. 1, lines 16-18. Thus, an outer shield 14 and an inner shield 16 are thin, flexible pieces of material that can be easily torn or deformed.

Because the outer shield 14 and the inner shield 16 may be folded and conformed, cut and easily torn, a person of ordinary skill in the art would recognize that the outer and inner shields 14, 16 of Morgan are thin, flexible pieces of material. Thus, neither of the thin foil outer and inner shields 14, 16 can reasonably be considered to be a substantially rigid metal pipe as set forth in claim 1.

As discussed above, the shielded wire harness of claim 1 includes a tube-shaped shielding member 50 having a sub-shield portion 53 and a main shield portion 51. See Figs 1 and 2. Because the main shield portion 51 is made of a substantially rigid metal pipe, the main shield portion 51 electromagnetically shields and physically protects the wires 30 from external forces. Further, the sub-shield portion 53 reduces vibrational stresses caused by a direct connection of the main shield portion 51 to the shield cases 11 and/or 21. See page 13, lines 15-19, and page 17, lines 23-25. Such effects and results cannot be achieved by combining the devices of the AOAPA and Morgan.

For at least these reasons, and the reasons previously set forth, Morgan, like the AOAPA, does not teach or suggest a main shield portion made of a substantially rigid metal pipe. Therefore, it is respectfully submitted that the shielding materials 14, 16 cannot reasonably be considered to be "substantially rigid."

**b. A Foil Is Not Inherently "Substantially Rigid"**

As discussed above, MPEP §2112 requires that the Examiner provide a basis in fact and/or technical reasoning to support the allegation that "substantial rigid" is an inherent characteristic that necessarily flows from the teachings of Morgan. However, the Examiner

merely alleges that metallic sheets forming shields are commonly utilized as a shield. See page 6 of the April 22, 2005 Advisory Action.

As commonly used, electrical shields used to prevent noise in electrical cables (e.g., coaxial TV cable) are flexible, not rigid as alleged by the Examiner. Specifically, as discussed above, Morgan teaches that use of foils as an electrical shield does not require substantial rigidity. The flexible nature of such shielding foils allows the cable to retain its desired flexibility. Further, it is well known that the foil is easily cut, deformed and/or stripped to add a connector to the cable for making connections with a cable that includes such shielding foils.

A foil, by definition, is a very thin sheet of metal. Rigid, by definition, means not flexible or pliant. Such very thin sheets of metal, such as aluminum foil, are inherently flexible and non-rigid. Such foils are well suited for shielding layers because such layers serve only to block electrical noise and typically are surrounded by an insulative casing, e.g., coaxial cable.

A person of ordinary skill in the art of cable shielding would understand and recognize that the foil shields, e.g., the inner and outer shields 14, 16 of Morgan, are not substantially rigid. Because the Examiner fails to provide a basis in fact and/or technical reasoning to support the allegation that "substantially rigid" is an inherent characteristic that necessarily flows from the teachings of Morgan, the Examiner fails to support the allegation of inherency.

Claims 2, 3, 5 and 6 depend from claim 1. Thus, claims 2, 3, 5 and 6 are at least for the reasons discussed above in connection with claim 1.

For at least the foregoing reasons, Appellant respectfully submit that one of ordinary skill in the art would not have combined the teachings of AOAPA and Morgan to achieve the subject matter of claims 1-3, 5 and 6, at least because neither of the references teach or suggest the recognition of the various problems addressed by the claimed subject matter.

Further, Appellant respectfully submit that the teachings of the references would not have led one of ordinary skill in the art to the claimed subject matter at least because none of the references teach or suggest a shielding member including a main shield portion made of a substantially rigid metal pipe. Therefore, the rejection of claims 1-3, 5 and 6 should be reversed.

**D. Claim 4 Would Not Have Been Obvious Over AOAPA, Morgan And Lawson**

Claim 4 is rejected under 35 U.S.C. §103(a) over AOAPA in view of Morgan, and further in view of Lawson. However, any permissible combination of AOAPA, Morgan and Lawson would not have rendered obvious the claimed invention.

As discussed above, neither AOAPA nor Morgan, teaches or suggests, a shielded wire harness including a shielding member having "a main shield portion made of a substantially rigid metal pipe," as recited in claim 1. Lawson does not remedy these deficiencies.

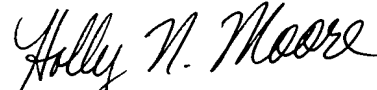
Lawson is directed to a ground shield connector 10 including a tinned soft copper compression ring 20 fitted over a tinned brass collector ring 18 to hold all end portions 26 of metallic shielding (braided portions) of each wire conductor 12. See Figs. 2 and 4, and col. 2, line 56 – col. 3, line 40. Lawson does not teach or suggest that the compression ring 20 or the collector ring 18 is a substantially rigid metal pipe. For at least these reasons, Lawson, like the AOAPA and Morgan, does not teach or suggest a main shield portion made of a substantially rigid metal pipe.

Claim 4 depends from claim 1. Thus, claim 4 is patentable for at least the reasons discussed above in connection with claim 1. Therefore, the rejection of claim 4 should be reversed.

**VIII. CONCLUSION**

For all of the reasons discussed above, it is respectfully submitted that the rejections are in error and that claims 1-6 allowable. For all of the above reasons, Appellants respectfully request this Honorable Board to reverse the rejections of claims 1-6.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Holly N. Moore".

James A. Oliff

Registration No. 27,075

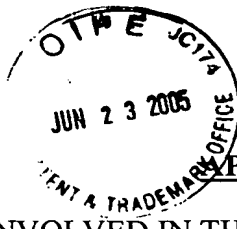
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**APPENDIX A - CLAIMS APPENDIX**

**CLAIMS INVOLVED IN THE APPEAL:**

1. A shielded wire harness comprising:
  - a plurality of wires;
  - a plurality of wire-side terminals respectively connected to end portions of the wires, and configured to be connected to respective terminals disposed within a shield case of an equipment; and
  - a shielding member formed in a tube shape and configured to enclose the plurality of wires collectively and to be connected to the shield case,
  - wherein the shielding member comprises a main shield portion made of a substantially rigid metal pipe, and a sub-shield portion formed shorter than the main shield portion and configured to be deformable.
2. The shielded wire harness as claimed in claim 1, wherein the sub-shield portion comprises a braided member formed in a tube shape by braided metal thin lines.
3. The shielded wire harness as claimed in claim 2, wherein the shielding member further comprises:
  - a connecting pipe made of metal and connected to the main shield portion; and
  - a shield shell having a conductive characteristic and configured to be connected to the shield case,
  - wherein one end portion of the braided member is connected to the connecting pipe, and the other end portion of the braided member is connected to the shield shell.
4. The shielded wire harness as claimed in claim 3, wherein the connecting pipe is being plated.
5. The shielded wire harness as claimed in claim 1, wherein the shielding member further comprises a drain hole.

6. The shielded wire harness as claimed in claim 5, wherein the drain hole is formed at the lower most position of a wiring route of the shielded wire harness and opened in substantially downward direction.